

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CONVOLVE, INC.

vs.

DELL, INC., ET AL

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CASE NO. 2:08-CV-244-CE

ORDER

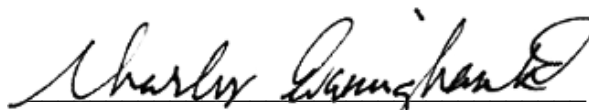
Pending before the court is Defendants' motion in limine to preclude Plaintiff from offering any testimony or evidence regarding Dell computer systems incorporating Seagate hard disk drives (Dkt. No. 401 at 2). The court recently denied Plaintiff's attempt to amend its infringement contentions to include Dell computers that incorporate hard disk drives manufactured by Seagate, explaining:

The Seagate hard drives...are the subject of a different pending lawsuit that Convolve filed against Seagate in the Southern District of New York ("the New York lawsuit"), which involves the same patent at issue in this lawsuit. In response to the motion to transfer venue that was filed in this case, Convolve represented to the court that the New York lawsuit "does not substantially overlap with the present action in the EDTX, and addresses many additional issues, different defendants, *and different infringing products*" (Dkt. No. 41 at 3). The court relied on this representation in balancing the 28 U.S.C. § 1404(a) *forum non conveniens* factors (Dkt. No. 103 at 6-7). Considering this along with Defendants' allegations of undue delay, the court is convinced that Plaintiff has failed to meet the good cause threshold for amending its infringement contentions. Accordingly, the court DENIES Plaintiff's motion to amend its infringement contentions to include Dell computers that incorporate hard disk drives manufactured by Seagate (Dkt. No. 200).

Dkt. No. 362. Although Plaintiff argues that different *models* of Seagate drives are at issue in this case, it appears that Plaintiff crafted its infringement contentions to avoid specifically accusing any Seagate drives to improve its venue position. As such, the court GRANTS

Defendants' motion in limine to preclude all testimony and evidence related to Dell computers incorporating Seagate hard disk drives.

SIGNED this 5th day of July, 2011.


CHARLES EVERINGHAM IV
UNITED STATES MAGISTRATE JUDGE